

SELENE FINANCE, L.P.,	)	Case No. 2:16-cv-02521-KJD-NJK
Plaintiff,	)	
vs.	)	ORDER DENYING MOTION TO
	)	COMPEL
SUNRISE HIGHLANDS COMMUNITY	)	
ASSOCIATION, et al.,	)	(Docket No. 37)
Defendants.	)	

“Discovery is supposed to proceed with minimal involvement of the Court.” *F.D.I.C. v. Butcher*, 116 F.R.D. 196, 203 (E.D. Tenn. 1986). Counsel should strive to be cooperative, practical and sensible, and should seek judicial intervention “only in extraordinary situations that implicate truly significant interests.” *In re Convergent Techs. Securities Litig.*, 108 F.R.D. 328, 331 (N.D. Cal. 1985). A threshold issue in the review of any motion to compel is whether the movant made adequate efforts to resolve the dispute without court intervention. *Cardoza v. Bloomin’ Brands, Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015). Federal Rule of Civil Procedure 37(a)(1) requires that the party bringing a motion to compel discovery must “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without

1 court action.” The Local Rules further expound on this requirement, providing that discovery motions  
2 will not be considered “unless the movant (1) has made a good faith effort to meet and confer . . . before  
3 filing the motion, and (2) includes a declaration setting forth the details and results of the meet-and-  
4 confer conference about each disputed discovery request.” Local Rule 26-7(c).

5 Judges in this District have held that “personal consultation” means the movant must “personally  
6 engage in two-way communication with the nonresponding party to meaningfully discuss each contested  
7 discovery dispute in a genuine effort to avoid judicial intervention.” *ShuffleMaster, Inc. v. Progressive*  
8 *Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996). The consultation obligation “promote[s] a frank  
9 exchange between counsel to resolve issues by agreement or to at least narrow and focus matters in  
10 controversy before judicial resolution is sought.” *Nevada Power v. Monsanto*, 151 F.R.D. 118, 120  
11 (D.Nev.1993). To meet this obligation, parties must “treat the informal negotiation process as a  
12 substitute for, and not simply a formalistic prerequisite to, judicial resolution of discovery disputes.”  
13 *Id.* This is done when the parties “present to each other the merits of their respective positions with the  
14 same candor, specificity, and support during the informal negotiations as during the briefing of discovery  
15 motions.” *Id.* To ensure that parties comply with these requirements, movants must file certifications  
16 that “accurately and specifically convey to the court who, where, how, and when the respective parties  
17 attempted to personally resolve the discovery dispute.” *ShuffleMaster*, 170 F.R.D. at 170.<sup>1</sup> Courts may  
18 look beyond the certification made to determine whether a sufficient meet-and-confer actually took  
19 place. *See, e.g., Cardoza*, 141 F. Supp. 3d at 1145.

20 The parties dispute whether a proper meet and confer was conducted with respect to the pending  
21 disputes. Specifically, Defendant’s counsel certifies that a discussion occurred regarding a second  
22 deposition during the meet and confer. Docket No. 37-1 at 2. Plaintiff’s counsel, on the other hand,  
23 certifies that no such discussion occurred, and the issue of a second deposition was first raised by  
24 Defendant’s counsel in an e-mail after the meet and confer. Docket No. 39 at 5, 7.

25 The Court declines to weigh into this factual dispute between counsel. As the movant,  
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27 <sup>1</sup> These requirements are now largely codified in the Court’s newly effective local rules. *See* Local  
28 Rule 26-7(c), Local Rule IA 1-3(f).

1 Defendant bears the threshold burden of submitting competent evidence establishing that a sufficient  
2 meet and confer was conducted. *See* Local Rule 26-7(c) (the movant must “include[] a declaration  
3 setting forth the details and results of the meet-and-confer conference”); *see also* Local Rule IA 1-3(f)(2)  
4 (the movant must “submit a declaration stating all meet-and-confer efforts”). In any event, the parties’  
5 declarations both support the fact that, after Defendant’s counsel received the supplemental disclosure  
6 from Plaintiff’s counsel and determined it to be insufficient, a further meet and confer was not held prior  
7 to the filing of the instant motion. *See* Docket No. 37-1; *see also* Docket No. 39 at 5-7.

8 For the reasons discussed more fully above, the motion to compel, Docket No. 37, is **DENIED**  
9 without prejudice. Defendant may renew that motion if a further meet-and-confer is conducted and the  
10 renewed motion otherwise comports with all applicable rules.

11 IT IS SO ORDERED.

12 DATED: October 3, 2017.

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16 NANCY J. KOPPE  
17 United States Magistrate Judge  
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